

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

GRACE PLAZA NURSING &
REHABILITATION CENTER

Employer-Petitioner

and

Case No. 29-UC-520

NEW YORK'S HEALTH & HUMAN
SERVICE UNION, 1199/SEIU, AFL-CIO

Union

ORDER

On March 22, 2004, the above-named Employer filed a petition in the above-entitled matter seeking clarification of the existing unit of approximately 200 employees at the Employer's facility in Great Neck, New York, so as to exclude approximately 19 registered nurses on the ground that they are supervisors as defined in Section 2(11) of the Act.

On March 25, 2004, a Notice of Hearing issued scheduling a hearing for April 1, 2004. The hearing was postponed indefinitely while an administrative investigation was conducted by the Region. During the investigation, all parties were afforded a full opportunity to submit evidence bearing on the issues.

The investigation established that the Long Island Health Facilities Association, including its member, the Employer, a residential adult care facility, and New York's Health & Human Service Union, 1199/SEIU, AFL-CIO, herein called the Union, have been parties to at least four successive collective

bargaining agreements covering a unit of employees including registered nurses (RNs). The most recent collective bargaining agreement is effective by its terms from May 1, 2002, through April 30, 2005. On June 2, 2003, new owners purchased the Employer and concede having assumed the collective bargaining agreement with the Union executed by the predecessor. The Employer states that at the time it purchased the facility and recognized the Union, it had no knowledge of the specific duties of the RNs and that they were supervisors within the meaning of Section 2(11) of the Act. At that time, the Employer did not raise with the Union that because it believed its RNs were supervisors within the meaning of the Act, they should not continue to be included in the Unit. Additionally, neither party expressed a desire to resolve the supervisory issue in any subsequent proceeding. Thus, from on or about June 2, 2003, until February 2004, the Employer provided the RNs with the terms and conditions of the extant contract. On February 12, 2004, the Employer says it changed the job classification and job description of its RNs and provided them with additional Section 2(11) indicia, so as to “ensure that its RNs were, in fact, Section 2(11) supervisors, and to negate any question regarding” the issue. It appears, however, that the actual duties of the RNs have remained the same.¹

In *Arthur C. Logan Memorial Hospital*, 231 NLRB 778 (1977), the Board refused to entertain a clarification petition to exclude supervisors filed during the term of a current contract. In that case, an employer filed a mid-term unit clarification petition seeking to exclude alleged supervisors from a voluntarily

¹ The Union has filed an 8(a)(5) charge against the Employer contending, *inter alia*, that by unilaterally granting its RNs additional responsibilities, it has violated the Act. That change is

established unit. The employer admitted that the alleged supervisors were covered by the parties' current contract, and the Board found that the parties were fully aware of the unit placement problems of these individuals when they executed this contract. The Board dismissed the petition and stated, "In our judgment, to permit the Employer to knowingly execute a contract and immediately thereafter petition the Board for clarification of that agreement to exclude classifications would tend to undermine the parties' collective bargaining relationship." See also *Arizona Electric Power Cooperative, Inc.*, 250 NLRB 1132 (1980). Here, the Employer contends that at the time it purchased the facility the RNs were supervisors within the meaning of the Act, and that it applied the terms and conditions of the current contract to them from June 2, 2003, through February 4, 2004. The Employer asserts, however, that it had no knowledge of the specific duties of its RNs at the time it recognized the Union as their collective bargaining representative, despite that the RN's job description then in effect described their duties as, inter alia, "supervises staff for necessary precautions, evaluates performance of staff, and initiates appropriate discipline when needed." In any event, the Employer's position that it mistakenly included the RNs in the unit because it was not fully aware of the unit placement problems is not a basis to process the petition mid-term in the contract. Thus, in *Union Electric Co.*, 217 NLRB 666, 667 (1975), the Board stated that "[c]larification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what

pending in the Region.

it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.” Accordingly, to permit clarification mid-term of the parties’ agreement, which is to include the RNs in the unit, would undermine the parties’ collective bargaining relationship. *Arthur C. Logan, supra*.

Accordingly, in these circumstances, I am dismissing the petition without prejudice to the filing of a clarification petition at the appropriate time.

IT IS ORDERED that the petition in the instant matter is dismissed.

IT IS FURTHER ORDERED that any Orders scheduling a hearing in this matter are withdrawn and any hearings scheduled are canceled.

Pursuant to the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Employer may obtain a review of this action by filing a request for review with the National Labor Relations Board, addressed to the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570. A copy of such request for review must be served on me and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington D.C. by the close of business on July 6, 2004. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, D.C. and a

copy of any such request for extension of time should also be submitted to me,
and to each of the other parties to this proceeding.

Dated at Brooklyn, New York, June 22, 2004.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
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Brooklyn, New York 11201